

ORIGINAL



**Qwest**

1020 Nineteenth Street NW, Suite 700  
Washington, DC 20036  
Phone 202.429.3120  
Facsimile 202.296.5157

**Melissa E. Newman**

Vice President-Federal Regulatory

December 1, 2000

EX PARTE

RECEIVED

DEC 1 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, TW-A325  
Washington, DC 20554

RE: CC Docket No. 96-98/

EX PARTE OR LATE FILED

Dear Ms. Salas:

On Wednesday, December 29, 2000, Molly Martin via telephone bridge; Jeffry Brueggeman and the undersigned, representing Qwest<sup>1</sup>, met with Jodie Donovan-May and Thomas Navin of the Common Carrier Bureau's Policy Division to discuss the WorldCom, Inc. Petition for a Waiver<sup>2</sup> of the Federal Communications Commission's Supplemental Order Clarification<sup>3</sup> regarding UNE combinations. The attached material was distributed at the meeting and served as the basis of the discussion.

In accordance with Section 1.1206(b)(2) of the Commission's rules, the original and one copy of this letter and attachment are being filed with your office for inclusion in the public record of this proceeding.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is included for this purpose.

Sincerely,

*Melissa E. Newman*

Attachment

cc: Thomas Navin  
Jodie Donovan-May

No. of Copies rec'd 9 + 1  
List A B C D E

<sup>1</sup> On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. changed its name to Qwest Corporation.

<sup>2</sup> WorldCom, Inc. Petition for a Waiver, CC 96-98 filed 09/12/00

<sup>3</sup> 15 FCC Rcd. 9587.

**Qwest Ex Parte  
Special Access Conversions  
November 29, 2000**

***WorldCom's "waiver" petition is really an untimely petition for reconsideration of the Supplemental Order Clarification***

- The FCC expressly rejected WorldCom's proposal for a blanket presumption that all circuits connected to a Class 5 switch carry significant local exchange traffic:

We do not adopt MCI WorldCom's proposal that incumbent LECs should presume that any circuit that a requesting carrier connects to a port on a 'Class 5' switch or its equivalent is used exclusively to provide local service. (*Supplemental Order Clarification*, ¶ 25)

- The FCC expressly refused to lift the prohibition on commingling:

We further reject the suggestion that we eliminate the prohibition on "commingling" (i.e., combining loops or loop-transport combinations with tariffed special access services) in the local usage option . . . . (*Supplemental Order Clarification*, ¶ 28)

***The FCC should not and need not adopt a presumption that a circuit connected to a Class 5 local switch is a local circuit.***

- The FCC cannot assume that all circuits connected to a Class 5 switch are local circuits because, as WorldCom admits, these circuits can be configured to carry interstate switched access traffic exclusively.
- WorldCom may request conversion of circuits connected to a Class 5 switch simply by certifying that they satisfy one of the local service options.
- If there is an audit, WorldCom will be able to support its certification with circuit configurations, routing tables, billing data and other information.

***Combining a UNE combination and a tariffed transport service does not constitute a UNE***

- A rule that would require an ILEC to combine UNE loop-transport combinations with its tariffed transport service would be contrary to the entire UNE structure – it would simply create a new tariffed service at a lower price.
- This new UNE would not satisfy the impairment test for unbundling, nor would it comport with the Eighth Circuit's recent decision reaffirming that the FCC does not have the authority to mandate new UNE combinations.

***The FCC has acknowledged the need to conduct an impairment analysis and preserve universal service***

- The FCC cannot allow Worldcom to convert circuits that may be used exclusively to provide exchange access service without first conducting the necessary statutory impairment analysis.
- In the *Supplemental Order*, the FCC acknowledged that it has not yet conducted such an analysis:

...Here, we must gather evidence on the development of the marketplace for exchange access in the wake of the new unbundling rules adopted in the Third Report and Order before we can determine the extent to which denial of access to network elements would impair a carrier's ability to provide special access services... (§ 16)

- The FCC also acknowledged the need to preserve the status quo in order to protect universal service. *Allowing WorldCom to abandon switched access would directly undercut universal service even more than the conversion of special access services.*